

Commercial Property Assessed Clean Energy (“C-PACE”) Gaining Momentum in Pennsylvania for Financing Improvements to Commercial Real Estate

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Eckert Seamans provides industry leading experience to clients by assisting them in implementing innovative financing strategies to reduce the costs of capital. One strategy that provides low-interest, long-term, fixed rate financing is Commercial Property Assessed Clean Energy (C-PACE), which is meant to fund the costs of clean energy improvements to commercial real estate. Loans are typically priced at a spread over the 10-year Treasury rate and fixed for the term, which typically matches the useful life of the improvements being financed and is often 20 to 30 years. The financing typically covers 100 percent of the costs of the improvements, so long as minimum loan-to-value ratios are satisfied for the property, leveraging the owner’s existing equity in the property.

The Commonwealth of Pennsylvania joined 30 other states in approving a property assessed clean energy program in 2018 (see Act 30 of 2018). C-PACE is gaining momentum in Pennsylvania, where 19 counties as of this writing have enacted enabling legislation to implement the program. The Sustainable Energy Fund (SEF) serves as the program administrator for all C-PACE programs outside of the City and County of Philadelphia, where the Philadelphia Energy Authority (PEA) oversees loan reviews and approvals. SEF has developed a comprehensive set of documents and resources to implement the program at the county level.

There is an active and competitive capital market for C-PACE loans because they are secured by a first lien special assessment on the improved property. In essence, the property owner agrees to tax itself through an annual special assessment equal to the debt service on the loan. The lien of the special assessment runs with the land and cannot be discharged until the C-PACE loan is satisfied. Because the C-PACE lien has priority over other encumbrances of record by statute, any financial institution holding a lien, mortgage, or security interest in, or other encumbrance, the real property must be provided notice of the C-PACE lien and must consent to the lien. Mortgage lenders benefit from the improvements through an increase in the overall value of the property and are willing to consent to the loans because statutory protections prevent C-PACE loans from being accelerated. Therefore, the risk to a mortgage holder is limited to the payment of the annual special assessment. This risk can be mitigated by the mortgage lender by requiring an escrow agreement for the annual special assessment payments and other assurances so that any protective advances the mortgage lender may need to make to avoid enforcement of the lien of a special assessment will be reimbursed.

While C-PACE programs share a common foundation, the model varies across states. In Pennsylvania, the program concentrates on energy efficiency and alternative and renewable energy improvements to commercial real estate. This focus area includes multi-family, residential rental properties following an amendment to the program authorized under Act 43 of 2022. Clean energy improvements are broadly defined under the statute to include the installation of alternative and renewable energy systems, water conservation measures, retrofitting an existing building to meet high-performance building standards, and installing equipment to facilitate or improve energy conservation or energy efficiency, including heating and cooling equipment.

At Eckert Seamans, we understand the expertise needed to counsel counties, municipalities, borrowers, developers, lenders, and mortgage holders through the myriad of issues facing such projects. We offer a full range of programming, including program implementation; negotiating loan documents and lender consent issues; real estate, zoning and landlord-tenant issues; federal tax issues, and public utility issues.

For more information on Eckert Seamans' multi-practice C-PACE team, please contact Matt Goffe, Director of Business Development and Marketing at mgoffe@eckertseamans.com.

This Legal Update is intended to keep readers current on developments in the law. It is not intended to be legal advice. If you have any questions, please contact Jonathan Cox at 717.237.7182 or jcox@eckertseamans.com; Scott Dismukes at 412-566-1998 or sdismukes@eckertseamans.com; Dan Clearfield at 717.237.7173 or dclearfield@eckertseamans.com; Michael Herzog at 412-566-6130 or mherzog@eckertseamans.com; or James Diamond at 717.237.6071 or jdiamond@eckertseamans.com, or any other attorney at Eckert Seamans with whom you have been working.